

M606MELP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v. 20 CR 314 (GHW)
ETHAN PHELAN MELZER,
Plea

6 Defendant.

7 -----x
8 New York, N.Y.
9 June 24, 2022
10 12:00 p.m.

Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS,
15 United States Attorney for the
Southern District of New York
16 BY: MATTHEW HELLMAN
SAMUEL S. ADELSBERG
17 Assistant United States Attorneys

DAVID PATTON
18 FEDERAL DEFENDERS OF NEW YORK, INC.
Attorney for Defendant
19 BY: JONATHAN ANDREW MARVINNY
ARIEL C. WERNER

20 Also Present: Daniel Sitko, USAO - Paralegal Specialist

M606MELP

1 THE COURT: The Court calls the United States v.
2 Melzer.

3 Can I ask each of you to state your appearances for
4 the record?

5 MR. HELLMAN: Good afternoon. Matthew Hellman and
6 Sam Adelsberg for the government, joined by paralegal
7 specialist, Daniel Sitko.

8 MR. MARVINNY: Good afternoon. Federal Defenders of
9 New York, Jonathan Marvinny and Ariel Werner for Ethan Melzer.

10 THE COURT: Thank you for being here and being here
11 timely.

12 So we're here for a change of plea hearing.
13 Mr. Melzer, I have been informed you wish to plead guilty to
14 Counts Four, Five, and Seven of the superceding indictment,
15 which is numbered S-1:20-CR-314; is that correct?

16 THE DEFENDANT: Yes, Judge.

17 THE COURT: Thank you.

18 Mr. Melzer, before I accept your plea, I'm going to
19 ask you a number of questions so I can establish to my
20 satisfaction that you wish to plead guilty because you are
21 guilty and not for some other reason, and also to ensure that
22 you know the rights that you will be giving up if you choose to
23 proceed and enter a guilty plea here.

24 If you don't understand any of my questions or if
25 you'd like to confer with your counsel at any point for any

M606MELP

1 reason, Mr. Melzer, please don't hesitate to let me know. I'd
2 be happy to give you as much time as you'd like to confer with
3 your counsel, and I'd be happy to clarify any of my questions
4 if it would be helpful for you.

5 THE DEFENDANT: Thank you, Judge.

6 THE COURT: My pleasure.

7 Because I'm going to be asking you a number of
8 questions, I'd ask you to please stand to take an oath to
9 answer my questions truthfully.

10 Thank you.

11 Mr. Melzer, do you swear the testimony that you shall
12 give this Court in this issue shall be the truth, the whole
13 truth, and nothing but the truth so help you God?

14 THE DEFENDANT: Yes, Judge.

15 THE COURT: Thank you very much. You can be seated.

16 Mr. Melzer, you're now under oath, which means that if
17 you answer any of my questions falsely, you may be persecuted
18 for the separate crime of perjury or making false statements.
19 The government would have the right to use any statements that
20 you give under oath against you in such a prosecution. Do you
21 understand that?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: Okay. Thank you.

24 So, first, Mr. Melzer, can you please tell me your
25 full name?

M606MELP

1 THE DEFENDANT: Ethan Phelan Melzer.

2 THE COURT: Thank you.

3 How old are you?

4 THE DEFENDANT: 24 years old.

5 THE COURT: Where are you born?

6 THE DEFENDANT: Louisville, Kentucky.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: I got to 10th grade and then dropped
9 out and went to Job Corps and got my high school diploma.

10 THE COURT: Can you describe for me your employment
11 experience?

12 THE DEFENDANT: Mostly just jobs in restaurants and
13 then the military.

14 THE COURT: Thank you.

15 Have you ever been treated or hospitalized for any
16 mental illness?

17 THE DEFENDANT: No, Judge.

18 THE COURT: Are you currently, or have you recently
19 been, under the care of a physician, psychiatrist, or
20 psychologist?

21 THE DEFENDANT: No, Judge.

22 THE COURT: Are you currently, or have you recently
23 been, hospitalized or treated for drug addiction?

24 THE DEFENDANT: No, Judge.

25 THE COURT: Within the past 24 hours, Mr. Melzer, have

M606MELP

1 you used or taken any alcohol, drugs, or medication?

2 THE DEFENDANT: No, Judge.

3 THE COURT: Is your mind clear today?

4 THE DEFENDANT: Yes, Judge.

5 THE COURT: Do you understand what's happening in this
6 proceeding?

7 THE DEFENDANT: Yes, Judge.

8 THE COURT: Thank you.

9 Have you received a copy of the indictment that's
10 pending against you?

11 THE DEFENDANT: Yes, Judge.

12 THE COURT: Thank you.

13 Have you had enough of a chance, Mr. Melzer, to
14 discuss with your lawyer the case in general, and in
15 particular, the charges to which you intend to plead guilty and
16 any possible defenses to those charges?

17 THE DEFENDANT: Yes, Judge.

18 THE COURT: Has your lawyer explained to you the
19 consequences of entering a plea of guilty?

20 THE DEFENDANT: Yes, Judge.

21 THE COURT: And are you fully satisfied with your
22 lawyer's representation of you?

23 THE DEFENDANT: Yes, Judge.

24 THE COURT: Thank you.

25 Counsel for defendant, let me turn to you. Have you

M606MELP

1 discussed this matter with your client?

2 MR. MARVINNY: Yes, your Honor.

3 THE COURT: Is he capable of understanding the nature
4 of these proceedings?

5 MR. MARVINNY: He is.

6 THE COURT: Thank you.

7 Counsel, do either of you or any of you, have any
8 doubt as to the defendant's competency to plead at this time?

9 MR. HELLMAN: No, your Honor.

10 MR. MARVINNY: No, your Honor.

11 THE COURT: Thank you.

12 On the basis of Mr. Melzer's responses to my
13 questions, my observations of his demeanor here in court, and
14 the representations of counsel, I find that the defendant is
15 competent to enter a plea of guilty at this time.

16 Now, Mr. Melzer, before we turn to your plea, I'm
17 going to explain a number of Constitutional rights that you
18 have. I'm doing this because these are rights that you will be
19 giving up if you choose to proceed and enter a guilty plea in
20 this matter. Again, if I say anything that you don't
21 understand or would like clarification about, please don't
22 hesitate to stop me. Either I or your lawyer will explain the
23 matter more fully.

24 So, first, Mr. Melzer, you have the right to plead not
25 guilty to the charges in the indictment. Do you understand

M606MELP

1 that?

2 THE DEFENDANT: Yes, Judge.

3 THE COURT: If you did plead not guilty, you'd be
4 entitled to a speedy and public trial by a jury on the charges
5 against you contained in the indictment. Do you understand
6 that?

7 THE DEFENDANT: Yes, Judge.

8 THE COURT: At a trial, you would be presumed to be
9 innocent, and the government would be required to prove you
10 guilty by competent evidence beyond a reasonable doubt before
11 you could be found guilty. Do you understand that?

12 THE DEFENDANT: Yes, Judge.

13 THE COURT: A jury of 12 people would have to agree
14 unanimously that you were guilty, and you would not have to
15 prove that you were innocent if you were to go to trial. Do
16 you understand that?

17 THE DEFENDANT: Yes, Judge.

18 THE COURT: At trial, and at every stage of your case,
19 you would be entitled to be represented by a lawyer. If you
20 could not afford a lawyer, one would be appointed for you at
21 public expense — that is free of cost. Do you understand that?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: During a trial, the witnesses for the
24 government would have to come to court and testify in your
25 presence, and your lawyer could cross-examine the government's

M606MELP

1 witnesses and object to evidence that's offered by the
2 government. Do you understand that?

3 THE DEFENDANT: Yes, Judge.

4 THE COURT: At a trial, you would also have an
5 opportunity to offer evidence on your own behalf, if you wished
6 to do so, and you would have the right to compel witnesses to
7 come to court to testify in your defense. Do you understand
8 that?

9 THE DEFENDANT: Yes, Judge.

10 THE COURT: At a trial, Mr. Melzer, you would have the
11 right to testify, if you chose to do so, but you would also
12 have the right not to testify. And if you decided not to
13 testify, no one, including the jury, could draw any inference
14 or suggestion of guilt from the fact that you did not testify.
15 Do you understand that?

16 THE DEFENDANT: Yes, Judge.

17 THE COURT: Do you understand, Mr. Melzer, that by
18 pleading guilty, you're giving up your right to seek
19 suppression; that is exclusion from a trial of any evidence
20 against you that the government may have obtained improperly?

21 THE DEFENDANT: Yes, Judge.

22 THE COURT: If you're convicted at a trial,
23 Mr. Melzer, you would have the right to appeal that verdict.
24 Do you understand that?

25 THE DEFENDANT: Yes, Judge.

M606MELP

1 THE COURT: And even now, as you're preparing to enter
2 this plea, you have the right to change your mind and to plead
3 not guilty and to go to trial on the charges against you
4 contained in the indictment. Do you understand that?

5 THE DEFENDANT: Yes, Judge.

6 THE COURT: If you plead guilty, Mr. Melzer, you also
7 give up your right not to incriminate yourself. I say that
8 because I expect that later in today's proceeding, I'll ask you
9 questions about what you did in order to satisfy myself that
10 you are guilty of the charged offenses to which you are
11 pleading guilty and you will have to admit and acknowledge your
12 guilt. Do you understand that?

13 THE DEFENDANT: Yes, Judge.

14 THE COURT: Thank you.

15 Now, Mr. Melzer, if you plea guilty, and if I accept
16 your plea, you'll give up your right to a trial and all of the
17 other rights that we have just talked about, other than your
18 right to a lawyer, which you have regardless of whether or not
19 you plead guilty. But there will be no trial, and I will enter
20 a judgment of guilty in a sentence on the basis of your plea.
21 There will be no appeal with respect to whether the government
22 could use the evidence that it has against you or with respect
23 to whether you did or did not commit this set of crimes. Do
24 you understand that?

25 THE DEFENDANT: Yes, Judge.

M606MELP

1 THE COURT: Thank you.

2 So, Mr. Melzer, we just talked about a number of
3 important rights that you have. Do you understand each and
4 every one of those rights?

5 THE DEFENDANT: Yes, Judge.

6 THE COURT: And are you willing to give up your right
7 to a trial and the other rights that I just discussed with you?

8 THE DEFENDANT: Yes, Judge.

9 THE COURT: Thank you.

10 Now, Mr. Melzer, I know that you've received a copy of
11 the indictment containing the charges against you. Can I ask,
12 have you read it?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Thank you.

15 Do you understand that Count Four of the indictment
16 charges that from at least in or about 2019 up to and including
17 in or about May 2020, you willingly and knowingly attempted to
18 and aided and abetted the attempt to murder U.S. service
19 members in violation of Title 18, United States Code, Sections
20 1114, 3238, and 2? Do you understand that's the nature of the
21 charge against you in County Four?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: Counsel for the United States, can I ask
24 you to please state the elements of that offense?

25 MR. HELLMAN: Yes, your Honor.

M606MELP

1 First, that the defendant intended to murder any
2 officer or employee or any person assisting such officer or
3 employee of the United States or of any agency in any branch of
4 the United States government.

5 Second, that the defendant intended that such murder
6 be committed while such officers or employees were engaged in
7 the performance of their official duties or on account of the
8 performance of such duties or on account of the assistance
9 provided by persons assisting them in such duties.

10 And third, that the defendant did some act that was a
11 substantial step in an effort to bring about or accomplish that
12 crime.

13 THE COURT: Thank you.

14 Mr. Melzer, do you understand that Count Five charges
15 that from at least in or about 2019 up to and including in or
16 about May 2020, you knowingly and intentionally did provide and
17 attempt to provide material support and resources to terrorists
18 in violation of Title 18, United States Code, Sections
19 2339A(a), 3238, and 2.? Do you understand that's the nature of
20 the charge against you in Count Five?

21 THE DEFENDANT: Yes, I do, Judge.

22 THE COURT: Counsel for the United States, can I ask
23 you to please state the elements of that offense?

24 MR. HELLMAN: Yes, your Honor.

25 First that the defendant knowingly provided or

1 M606MELP

2 attempted to provide material support or resources.

3 And, second, that the defendant knew or intended that
4 the provision or attempted provision of such material support
5 or resources would be used in preparation for or in carrying
6 out another crime; specifically, here, murdering U.S. military
service members.

7 THE COURT: Thank you.

8 Mr. Melzer, do you understand that Count Seven charges
9 that between in or about April 2020 and May 2020, you illegally
10 transmitted national defense information to an unauthorized
11 person with reason to believe that such information could be
12 used to the injury of the United States in violation of
13 Title 18, United States Code, Section 793(d) and 2? Do you
14 understand that's the nature of the charge against you?

15 THE DEFENDANT: Yes, Judge.

16 THE COURT: Thank you.

17 Counsel for the United States, can I ask you to please
18 state the elements of that offense?

19 MR. HELLMAN: Yes.

20 First, that the defendant had lawful possession of
21 access to, control over, or was entrusted with information.

22 Second, that the information in question was related
23 to the national defense.

24 Third, that the defendant had reason to believe that
25 the information could be used to the injury of the

M606MELP

1 United States or to the advantage of any foreign nation.

2 And, fourth, that the defendant willfully communicated
3 or delivered or transmitted or caused to be communicated,
4 delivered, or transmitted, or attempted to communicate,
5 deliver, transmit, and cause to be communicated, delivered, and
6 transmitted, the information to a person who was not entitled
7 to receive it.

8 THE COURT: Thank you.

9 Mr. Melzer, do you understand that if you were to go
10 to trial for each of these counts, that the government would be
11 required to prove all of the substantive elements of each of
12 the offenses beyond a reasonable doubt?

13 THE DEFENDANT: Yes, Judge.

14 THE COURT: Thank you.

15 Do you understand that the government would be
16 required to prove that venue is appropriate in the
17 Southern District of New York, which includes
18 Westchester County, among other places, by a preponderance of
19 the evidence?

20 THE DEFENDANT: Yes, Judge.

21 THE COURT: Thank you.

22 Now, Mr. Melzer, I'm going to tell you the maximum
23 possible penalty for this crime. The maximum means the most
24 that could possibly be imposed. It does not mean that it's
25 what you'll necessarily receive. But you have to understand

M606MELP

1 that by pleading guilty, you're exposing yourself to the
2 possibility of receiving any combination of punishments up to
3 the maximum that I'm about to describe. Do you understand
4 that?

5 THE DEFENDANT: Yes, Judge.

6 THE COURT: Thank you.

7 So, first, I'm going to tell you about the possible
8 restrictions on your liberty. The maximum term of imprisonment
9 for Count Four is 20 years, which could be followed up to a
10 lifetime term of supervised release. The maximum term of
11 imprisonment for Count Five is 15 years, which could also be
12 followed up to a lifetime term of supervised release. The
13 maximum term of imprisonment for Count Seven is ten years,
14 which could be followed by up to three years of supervised
15 release.

16 Mr. Melzer, if you are sentenced to a term of
17 supervised release, you will be subject to supervision by the
18 probation office. There will be rules of supervised release
19 that you will have to follow, and if you violate those rules
20 you can be returned to prison without a jury trial to serve
21 additional time with no credit for any time you served in
22 prison as a result of your plea and no credit for any time
23 spent on post-release supervision. You should also understand
24 that there is no parole in the federal system, and that if you
25 are sentenced to prison, you will not be released early on

M606MELP

1 parole. Do you understand that?

2 THE DEFENDANT: Yes, Judge.

3 THE COURT: Thank you.

4 Second, in addition to these restrictions on your
5 liberty, the maximum possibly punishment also includes certain
6 financial penalties. The maximum allowable fine for each of
7 Counts Four, Five, and Seven is \$250,000, or twice the gross
8 monetary gain derived from the offense or twice the gross
9 monetary loss to persons other than yourself, whichever is
10 greater, again, for each of those three counts.

11 In addition, I can order restitution to any person or
12 entity injured as a result of your criminal conduct. I can
13 also order you to forfeit all property derived from the offense
14 or used to facilitate the offense. And, finally, I must also
15 order a mandatory special assessment of \$100 for each of the
16 offenses to which you plead guilty.

17 Counsel, before I proceed, do any of you wish to
18 correct or amend any of the penalties that I just described?

19 MR. HELLMAN: No, your Honor.

20 MR. MARVINNY: No, your Honor.

21 THE COURT: Thank you.

22 Mr. Melzer, do you understand that these are the
23 maximum possible penalties?

24 THE DEFENDANT: Yes, Judge.

25 THE COURT: Thank you. Do you understand that it is

M606MELP

1 possible, taking all three counts together, that you could be
2 sent to prison for a total of 45 years of imprisonment?

3 THE DEFENDANT: Yes, Judge.

4 THE COURT: Thank you.

5 Mr. Melzer, do you understand that as a result of your
6 guilty plea, you may lose certain valuable civil rights, to the
7 extent you have them or might otherwise obtain them now, such
8 as the right to vote, the right to hold public office, the
9 right to serve on a jury, and the right to possess any kind of
10 firearm?

11 THE DEFENDANT: Yes, Judge.

12 THE COURT: Mr. Melzer, are you serving any other
13 sentence, either state or federal, at this time?

14 THE DEFENDANT: No, Judge.

15 THE COURT: To your knowledge, are you being
16 prosecuted in state court for any crime?

17 THE DEFENDANT: No, Judge.

18 THE COURT: Thank you.

19 Mr. Melzer, do you understand that if your lawyer or
20 anyone else has attempted to predict what your sentence will
21 be, that their prediction could be wrong?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: Do you understand that the sentence
24 ultimately imposed may be different from any estimate that your
25 attorney may have given you?

M606MELP

1 THE DEFENDANT: Yes, Judge.

2 THE COURT: Thank you. That's good. Because no one,
3 not your lawyer, not the government's lawyer, really no one,
4 can give you any assurance of what your sentence will be
5 because I'm going to decide your sentence, and I'm not going to
6 do that now. Do you understand?

7 THE DEFENDANT: Yes, Judge.

8 THE COURT: Thank you. Now, Mr. Melzer, before I
9 impose your sentence, I'll review a presentence report that
10 will be prepared by the probation department. You and your
11 counsel and counsel for the United States will have the
12 opportunity to review that report and to challenge the facts
13 that are reported in it as well as the application of the
14 advisory sentencing guidelines that are recommended by the
15 probation officer. I'm obliged to do my own independent
16 calculation of the advisory sentencing guidelines that applies
17 in your case.

18 After your initial advisory guidelines range has been
19 determined, I have the authority in certain circumstances to
20 depart upwards and downwards from that range. Ultimately, I'll
21 determine what a reasonable sentence is for you based on a
22 number of sentencing factors, which you can find in the statute
23 at 18 United States Code, Section 3553(a). That may result in
24 the imposition of a sentence that's either greater or lesser
25 than the advisory sentencing guidelines range constrained, of

M606MELP

1 course, by the statutory cap on the total duration of any
2 sentence. Do you understand all of this?

3 THE DEFENDANT: Yes, Judge.

4 THE COURT: Thank you.

5 Have you and your attorney discussed how the advisory
6 sentencing guidelines might apply to your case?

7 THE DEFENDANT: Yes, Judge.

8 THE COURT: Thank you.

9 Now, Mr. Melzer, even if your sentence is different
10 from what your lawyer or anyone else has told you it might be,
11 even if it's different from what you expect or from what's
12 contained in a written agreement that you've entered into with
13 the government, you will still be bound by your guilty plea and
14 will not be allowed to withdraw your plea of guilty. Do you
15 understand that?

16 THE DEFENDANT: Yes, Judge.

17 THE COURT: Thank you.

18 So, Mr. Melzer, we just talked about a number of
19 possible consequences of your plea. Do you understand all of
20 the possible consequences of your plea that we just talked
21 about?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: Thank you.

24 Now, I understand that there is a written plea
25 agreement between you, Mr. Melzer, and your lawyer and the

1 M606MELP

2 lawyer for the government. I have in front of me the original
3 letter plea agreement dated June 22, 2022, to your lawyers,
4 Mr. Marvinny and Ms. Werner, from Assistant United States
5 Attorneys Adelsberg, Hellman, and Ravener. I'm going to mark
6 this as Court Exhibit 1. I'm going to hand it forward to the
government to retain in its possession.

7 Before I do that, I'd like to ask you some questions
8 about this agreement, Mr. Melzer.

9 First, did you sign the original of the plea agreement
10 on the last page?

11 THE DEFENDANT: Yes, Judge.

12 THE COURT: Did you do that today in the presence of
13 your lawyer?

14 THE DEFENDANT: Yes, Judge.

15 THE COURT: Did you read the agreement before you
16 signed it?

17 THE DEFENDANT: Yes, Judge.

18 THE COURT: Did you discuss it with your lawyer before
19 you signed it?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: Did you fully understand it before you
22 signed it?

23 THE DEFENDANT: Yes, Judge.

24 THE COURT: Thank you.

25 Now, one of the features of your agreement with the

M606MELP

1 government is that you've agreed on the guidelines range, or
2 the guideline sentence that applies in this case. You should
3 know that agreement is binding on you and it's binding on the
4 government, but it's not binding on me. I say that because I
5 have my own obligation to determine what the correct guidelines
6 range and what the appropriate sentence is in your case.

7 Now, I'm not saying that I'm going to come up with
8 anything that's different from what's in your agreement with
9 respect to the sentencing guidelines calculation. At this
10 point, I just don't know. But it's important for you to
11 understand that if I do come up with a range that's different
12 from the one that you've agreed to with the government, I will
13 not let you withdraw your plea, even if the range that I
14 determine is higher than the one that you've agreed to with the
15 United States, understanding in all circumstances that the
16 total sentence cannot exceed the statutory maximum. Do you
17 understand that?

18 THE DEFENDANT: Yes, Judge.

19 THE COURT: Thank you.

20 Do you understand, Mr. Melzer, that under some
21 circumstances, you or the government may have the right to
22 appeal any sentence that I impose.

23 THE DEFENDANT: Yes, Judge.

24 THE COURT: Thank you.

25 Now, Mr. Melzer, in your plea agreement, you have

M606MELP

1 waived a number of rights to appeal your conviction and
2 sentence. You've agreed not to file a direct appeal or to
3 bring a collateral challenge, including but not limited to an
4 application under Title 28, United States Code, Sections 2255
5 or 2241 of any sentence at or below the stipulated guideline
6 sentence of 540 months' imprisonment. You've also agreed not
7 to appeal or bring a collateral challenge of any supervised
8 release that is less than or equal to the statutory maximum.
9 You've also agreed not to appeal or bring a collateral
10 challenge to any fine that is less than or equal to \$500,000.
11 You've also agreed not to appeal or bring a collateral
12 challenge of any special assessment that is less than or equal
13 to \$300.

14 Furthermore, you've agreed not to attack your
15 conviction and sentence on direct appeal or collaterally on the
16 grounds that the United States has failed to produce any
17 discovery material, Jencks Act material, material pursuant to
18 the *Brady v. Maryland*, other than information establishing your
19 factual innocence, or impeachment material pursuant to
20 *Giglio v. United States* that has not already been produced as
21 of the date of the signing of the agreement.

22 Furthermore, although I understand that you're a
23 United States citizen, you have agreed not to challenge your
24 conviction and sentence on direct appeal or collaterally on the
25 basis of any actual or perceived adverse immigration

M606MELP

1 consequences, including removal or denaturalization resulting
2 from your plea and conviction.

3 Mr. Melzer, do you understand the rights to appeal or
4 otherwise challenge your conviction and sentence that you have
5 waived in your plea agreement?

6 THE DEFENDANT: Yes, I do, Judge.

7 THE COURT: Thank you. And are you willing to waive
8 those rights?

9 THE DEFENDANT: Yes, Judge.

10 THE COURT: Thank you.

11 Mr. Melzer, does this written plea agreement
12 constitute your complete and total understanding of the entire
13 agreement between you and the government?

14 THE DEFENDANT: Yes, Judge.

15 THE COURT: Has anything been left out?

16 THE DEFENDANT: No, Judge.

17 THE COURT: Thank you.

18 Mr. Melzer, other than what's written in this
19 agreement, has anyone made any promise to you or offered you
20 any inducement to plead guilty or to sign this agreement?

21 THE DEFENDANT: No, Judge.

22 THE COURT: Has anyone threatened you or forced you to
23 plead guilty or to sign the plea agreement?

24 THE DEFENDANT: No, Judge.

25 THE COURT: Has anyone made a promise to you as to

M606MELP

1 what your sentence will be?

2 THE DEFENDANT: No, Judge.

3 THE COURT: Thank you.

4 So, Mr. Melzer, I told you earlier there would come a
5 time when I would turn to you and ask you what makes you
6 believe you're guilty of these three offenses. This is that
7 time. Would you please tell me what it is that you did that
8 makes you believe that you're guilty of the three charges to
9 which you intend to plead guilty?

10 THE DEFENDANT: Yes, Judge.

11 THE COURT: Thank you.

12 THE DEFENDANT: At a time in May 2020, with the intent
13 that U.S. service members be killed, I disclosed sensitive
14 information about my Army unit's upcoming deployment to
15 individuals I was communicating with online in the
16 messaging app, Telegram.

17 And through the same conduct, I provided material
18 resources knowing that they were to be used in preparation for
19 the attempted murder of U.S. service members.

20 And, finally, I understood that the information I
21 disclosed was sensitive national defense information, and that
22 the individuals I provided it to online were not entitled to
23 receive it. I'm sorry, and I regret every single thing I did.

24 THE COURT: Thank you.

25 When you did those things, did you know what you were

M606MELP

1 doing was wrong and illegal?

2 THE DEFENDANT: Yes, Judge.

3 THE COURT: Thank you.

4 Counsel for defendant, do you know of any valid
5 defense that would prevail at trial or do you know of any
6 reason why your client should not be permitted to plead guilty?

7 MR. MARVINNY: No, your Honor.

8 THE COURT: Were there additional questions you'd like
9 me to ask the defendant?

10 MR. HELLMAN: May I have a moment, your Honor?

11 THE COURT: Thank you. Take your time.

12 (Counsel confer)

13 MR. HELLMAN: No, thank you.

14 THE COURT: Thank you.

15 Counsel, let me hear briefly from the United States,
16 can you please briefly summarize the evidence that you would
17 present were the defendant to proceed to trial?

18 MR. HELLMAN: Yes. Thank you.

19 The government has, in the course of this case, made
20 significant factual proffers and understands the Court is
21 familiar with the evidence.

22 It would expect to introduce at trial -- but to
23 summarize the categories of evidence first, the evidence would
24 consist largely of the following:

25 First, materials recovered from searches of the

M606MELP

1 defendant's phone, including encrypted communications from the
2 messaging application Telegram, and others; photographs,
3 documents, videos, and other materials relating to, among other
4 things, a group known as the Order of 9 Angles, or O9A,
5 Jihadist terrorism, including ISIS and Al Queda, and generally
6 the white supremacist movement, and others.

7 Another category is records from service providers,
8 including the defendant's e-mails and online communications.

9 Next, the defendant's military records, including
10 enlistment paperwork, security clearance paperwork, and
11 self-disclosures made by the defendant to the military,
12 classified information, nondisclosure agreements, training
13 certificates, including trainings the defendant received with
14 respect to operational security, antiterrorism awareness, and
15 counterintelligence threat awareness and reporting.

16 Next, there would be evidence related to the
17 defendant's anticipated June 2020 deployment to what is
18 referred to in this case as the "military base." That includes
19 witness testimony regarding training and briefings the
20 defendant and his unit received, documents relating to
21 unclassified and classified briefings provided to the
22 defendant's unit, training calendars and unit information, and
23 military base related materials, such as maps and grid
24 coordinates.

25 There would also be witness testimony from members of

M606MELP

1 Melzer's unit, including Melzer's commanding officers and
2 platoon mates. As for the training and preparations for
3 deployment to the "military base" in May and June of 2020, as
4 well as the unit's actual deployment without the defendant to
5 the military base.

6 Witness testimony regarding Melzer's activities prior
7 to joining the military would also be offered by the government
8 as well as expert testimony concerning the white supremacist
9 movement and its connections to the Order of 9 Angles.

10 That evidence, among other things, would show that the
11 defendant was a member of an extremist group of Satanist,
12 neo-Nazi, anarchistic, and white supremacist views, known as
13 the Order of 9 Angles. As part of the defendant's allegiance,
14 to O9A, the defendant joined the military in December 2018 as
15 part of what O9A calls an insight role; in other words, to
16 infiltrate the armed forces to gain personal training and
17 experience while subverting the goals of the organization;
18 here, the United States military.

19 The defendant was subsequently assigned to the 173rd
20 Airborne Brigade Combat Team --

21 MR. MARVINNY: Your Honor, I object. This is going
22 beyond the description.

23 THE COURT: Thank you.

24 All I really need to hear, counsel, is briefly what
25 the evidence would be that establishes the elements of each of

M606MELP

1 these crimes, to the extent there's anything you'd like to
2 present to supplement the allocution by the defendant.

3 MR. HELLMAN: If the Court is satisfied. I'll also
4 note the defendant was first brought to Westchester County at
5 Stewart International Airport following his arrest.

6 THE COURT: Counsel for defendant, do you accept the
7 proffer regarding the propriety of venue here?

8 MR. MARVINNY: Yes, we do. Thank you.

9 THE COURT: Thank you very much.

10 Counsel, do both of you agree that there is a
11 sufficient factual predicate for a guilty plea?

12 Counsel, first, for the United States.

13 MR. HELLMAN: Yes.

14 THE COURT: Thank you.

15 Counsel for defendant.

16 MR. MARVINNY: Yes.

17 THE COURT: Thank you.

18 Counsel, do any of you know of any reason that I
19 should not accept the defendant's plea of guilty?

20 Counsel for the United States?

21 MR. HELLMAN: I do not.

22 THE COURT: Thank you.

23 Counsel.

24 MR. MARVINNY: No, your Honor.

25 THE COURT: Mr. Melzer, I ask you to please stand.

M606MELP

1 Thank you, Mr. Melzer.

2 Mr. Melzer, Count Four of the indictment charges that
3 from at least in or about 2019 up to and including in or about
4 May 2020, you willingly and knowingly attempted to and aid and
5 abetted the attempt to murder U.S. service members in violation
6 of Title 18, United States Code, Section 1114, 3238, and 2.

7 How do you plead to this count?

8 THE DEFENDANT: Guilty, Judge.

9 THE COURT: Thank you.

10 Count Five charges that from at least in or about 2019
11 up to and including in or about May 2020, you knowingly and
12 intently did provide and attempt to provided material support
13 of resources to terrorists in violation of Title 18,
14 United States Code, Sections 2339A(a), 3238, and 2. How do you
15 plead to this count?

16 THE DEFENDANT: Guilty, Judge.

17 THE COURT: Count Seven charges that between in or
18 about April 2020 and May 2020, you illegally transmitted
19 national defense information to an unauthorized person with
20 reason to believe such information could be used to the injury
21 of the United States in violation of Title 18, United States
22 Code, Section 793(d) and 2. How do you plead to this count?

23 THE DEFENDANT: Guilty.

24 THE COURT: Mr. Melzer, the indictment contains
25 forfeiture allegations with respect to Counts Four and Five of

M606MELP

1 the indictment. Do you admit the forfeiture allegations with
2 respect to Counts Four and Five of the indictment?

3 THE DEFENDANT: Yes, Judge.

4 THE COURT: Thank you.

5 It is the finding of the Court in this case that
6 Mr. Melzer is fully competent and capable of entering an
7 informed plea, that Mr. Melzer is aware of the nature of the
8 charges and the consequences of the plea, and that the plea of
9 guilty is a knowing and voluntary plea supported by an
10 independent basis in fact containing each of the essential
11 elements of the offenses. The plea is therefore accepted, and
12 the defendant is now adjudged guilty of those offenses.

13 Thank you very much, Mr. Melzer. You can be seated.

14 Mr. Melzer, the probation department will want to
15 interview you in connection with the presentence report it will
16 prepare, as I was describing earlier.

17 Counsel for defendant, do you wish to be present for
18 any interview in connection with that report?

19 MR. MARVINNY: Yes, please.

20 THE COURT: I direct that there be no interview unless
21 counsel is present.

22 Counsel for the United States, please provide the
23 probation office with the government's factual statement within
24 seven days.

25 Counsel for defendant, please arrange for Mr. Melzer

M606MELP

1 to be interviewed by the probation department within the next
2 14 days.

3 Mr. Melzer, just briefly. If you choose to speak to
4 the probation department, I just ask that you try to make sure
5 that what you say there is truthful and accurate. This report
6 is very important for me in deciding what the appropriate
7 sentence is in your case. I will read it very carefully.

8 I'm lingering on this issue now because you and your
9 counsel have the right to review the report and to comment on
10 it, both to the probation officer who is preparing the report,
11 and also to me at the time of sentencing. So I just want to
12 encourage you to take advantage of that right and to read the
13 draft report and to let your counsel know if you have any
14 issues with it. If you think that it's factually inaccurate or
15 if there are any other issues with respect to it, please point
16 them out to your lawyers so they can point them to the
17 probation officer or to my attention, if necessary, before
18 sentencing.

19 I'm going to set a sentencing date now. Counsel, I'd
20 like to propose that sentencing take place on September 29,
21 2022, at 10:00 a.m. Does that date and time work for each of
22 you?

23 First, counsel for the United States.

24 MR. HELLMAN: Yes.

25 THE COURT: Thank you.

M606MELP

1 Counsel for defendant.

2 MR. MARVINNY: Your Honor, that date works. I wonder
3 if the Court would consider a longer sentencing date than is
4 typical, given the complexity of the issues that I think are
5 likely to arise at sentencing and the amount of work I think
6 both sides are going to have to endeavor into to get this done.
7 I also have a trial scheduled in late October in the
8 Eastern District of New York that will present some time
9 constraints, so I'm wondering -- Mr. Adelsberg is my opponent
10 in that trial, for what it's worth.

11 I am wondering if the Court will consider a sentencing
12 date approximately six months from today rather than three.

13 THE COURT: Thank you.

14 I'm happy to accommodate that. I'm on trial during
15 much of December, at least I expect to be. So I propose, then,
16 that we schedule this for right after the holiday. My proposal
17 would be that we schedule this for January 4 at 1:00 p.m. in
18 light of the defense's request.

19 Counsel, does that work for each of you? First,
20 counsel for the United States?

21 MR. HELLMAN: Your Honor, if it would be possible for
22 a date later in that week or the following, the government
23 would appreciate that.

24 THE COURT: Thank you. That's not a problem.
25 January 6 at 10:00 a.m.

M606MELP

1 MR. HELLMAN: That would be fine. Thank you.

2 THE COURT: Counsel for defendant.

3 MR. MARVINNY: Yes. Thank you, your Honor.

4 THE COURT: Very good. Thank you.

5 So sentencing is scheduled for January 6, 2023, at
6 10:00 a.m.

7 Just briefly, counsel. Counsel for defendant alluded
8 to the prospect of complex sentencing submissions here. As a
9 result, my inclination is to deviate from the default rule in
10 my individual rules of practice regarding the timing of
11 sentencing submissions.

12 The default rule is that the defendant's submission
13 are due two weeks prior to sentencing and that the government's
14 are due one week prior to sentencing. In light of your
15 comments, counsel, I'm inclined to modify the default rule to
16 have the defendant's submissions due four weeks before
17 sentencing and the government's due two weeks before
18 sentencing.

19 Counsel, is there any reason why you can't proceed in
20 that way?

21 Counsel first for the government.

22 MR. HELLMAN: No.

23 THE COURT: Counsel.

24 MR. MARVINNY: No, your Honor.

25 THE COURT: Very good. Thank you.

M606MELP

1 So I'm asking the parties to present your sentencing
2 submissions in accordance with that schedule in lieu of the
3 default schedule established in my individual rules of
4 practice.

5 Very good. Anything else that we need to take up now
6 before we adjourn?

7 First, counsel for the United States.

8 MR. HELLMAN: No, thank you.

9 THE COURT: Thank you very much.

10 Counsel for defendant.

11 MR. MARVINNY: No, thank you.

12 THE COURT: Thank you very much. This proceeding is
13 adjourned.

14 (Adjourned)